IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No.125/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
Dated : 21.4.2007.

Heard Mr. Bhandarkar, learned counsel for the appellants and Mr. Vyawahare, learned counsel for the respondent.

This second appeal is directed against the judgment and decree dated 27th October 2004 passed by 1st Adhoc Additional District Judge, Gondia in Regular Civil Appeal No.38/2001 dismissing the appeal filed against the judgment and decree dated 25.4.2001 passed by 4th Joint Civil Judge, Jr. Dn. Gondia in Regular Civil Suit No. 207/1995.

The appellants are the legal

representatives of Pawanlal Pande against whom the respondent filed Regular Civil Suit No. 207/1995 claiming possession of land and damages. The suit was filed after obtaining permission from the Rent Controller to terminate the tenancy of Pawanlal Pande who died during pendency of the suit. The suit was contested by the appellants herein. According to the defendants, tenancy was not legally terminated. The trial Court, upon appreciation of the evidence led by the parties partly decreed the suit and ordered damages. The appeal preferred by the defendants was also dismissed up-holding the finding given by the trial Court. Hence, the present second appeal.

Mr. Bhandarkar, learned counsel appearing for the appellants-defendants submitted that the notice issued by the respondent Pawanlal to terminate the tenancy was not legal and, therefore, the suit filed by the respondent was not

maintainable. He further submitted that the findings given by the trial Court regarding arrears of rent which is confirmed by the Appellate court are not borne out from the evidence on record and are as such perverse.

Per contra, learned counsel appearing for the respondent supported the findings given by both the Courts below.

I have considered the submissions made by learned counsel for the respective parties and perused the records.

It is not disputed that the tenancy was the monthly tenancy beginning from 1st of every month. Therefore, notice dated 13.8.1995 for termination of tenancy issued by the respondent terminating the tenancy at the end of the month cannot be said to be illegal. Therefore, I do not find any merit in the submissions of Mr. Bhandarkar that the notice issued by the respondent was illegal. Insofar as the arrears of rent by the

defendant is concerned, the finding given by the trial Court is based upon proper appreciation of the evidence led by the parties and as such cannot be faulted. Similar is the case insofar as grant of damages @ Rs. 10/- per day is concerned. Therefore, the findings given by the trial Court and confirmed by the lower Appellate court can by no stretch of imagination be said to be perverse warranting interference in second appeal. Moreover, no substantial question of law is involved in the present second appeal.

For the reasons aforesaid, I do not find any merit in the present second appeal. Therefore, the appeal is dismissed.

JUDGE

A.